

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2002-01 IT

January 17, 2002

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Corporate Income Tax – Eligibility of an S corporation's C corporation subsidiary to qualify as an Indiana special corporation.

The taxpayer requests the department to rule on the ability of a C corporation subsidiary to qualify as special corporation for Indiana income tax purposes.

Authority: IRC 1361, IRC 1504, IC 6-3-2-2.8

Statement of Facts

The taxpayer states that it is a C corporation, which has filed in Indiana as a qualified special corporation for several years. During 2001, a change in its corporate structure occurred due to certain financing requirements. The taxpayer is now owned by a holding company, "X". The holding company is an S corporation. The holding company is owned by the individuals, which previously owned the taxpayer.

Pursuant to IC 6-2.1-3-24.5, certain corporations can be excluded from the Indiana gross receipts tax. Such corporations are called "Special Corporations." To qualify as a special corporation, the taxpayer must be eligible to elect federal S corporate status, but has not elected to do so. Additionally, the taxpayer must not derive more than 25% of its gross income from passive investments and the taxpayer must be able to prove it qualifies.

The taxpayer believes that it qualifies as a Special Corporation under IC 6-2.1-3-24.5 and that it can answer all of the questions on the IT-20SC in such a way as to prove it so qualifies.

It believes so based on its interpretation of IRC 1361(b)(3): federal law which now permits a wholly owned subsidiary to be treated as an S corporation. The taxpayer argues that since it is a wholly owned subsidiary of an S corporation holding company it could elect to be treated as an S corporation. Per IC 6-2.1-3-24.5, if an entity can elect to be treated as an S corporation under any of the provisions of IRC 1361(b) it can be an Indiana Special Corporation and the answer to item "Y" of the IT-20SC questionnaire would be yes.

Discussion

IRC 1361 allows an S corporation to own a qualified subsidiary. A qualified subsidiary is an otherwise eligible corporation, 100 percent of the shares of which are held by its parent S corporation. An election has to be made by the parent for the qualified corporation to become a qualified subchapter S subsidiary (QSSS.)

Pursuant to IC 6-3-2-2.8, the department accepts this election and permits the parent and subsidiary to be recognized as one taxpayer. This treatment of an S corporation and a QSSS is not related to the determination of whether a C corporation subsidiary of an S corporation (or a C corporation eligible to be treated as an S corporation) is eligible to be a special corporation.

This tax treatment of the parent and the QSSS is permitted only upon election and all entities satisfying the requirements. So it is clear then that the tax treatment, and qualifications for same, of a subsidiary owned by an S corporation are not the same. The C corporation subsidiary has to be eligible for S corporation status outside the framework of a QSSS. In the instant case, the C corporation is owned by an S corporation which disqualifies the C corporation from S corporation status as a corporation is not an eligible shareholder of an S corporation pursuant to IRC 1361(b)(1)(B).

Ruling

In this case the C corporation can not be a QSSS because it does not meet the definition of an S corporation pursuant to IRC 1361(b)(1)(B). Here the shareholder of the C corporation is not an individual or other eligible shareholder, but rather an S corporation. Therefore the C corporation can not qualify as an S corporation, consequently the C corporation can not be considered a special corporation for Indiana income tax purposes.

Caveat

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.